

FILED
UNITED STATES DISTRICT COURT CLERKS OFFICE
FOR THE DISTRICT OF MASSACHUSETTS

2005 MAR -2 P 1:15
CA NO.

U.S. DISTRICT COURT
DISTRICT OF MASS

JEFFERY WITHAM;
Plaintiff

v.

CITY OF SALEM, MAYOR STANLEY
USOVICZ, OFFICER PATRICIA MURPHY,
CHIEF OF POLICE ROBERT St. PIERRE,
OFFICER DUBIEL, OFFICER SHAFFAVAL;
Defendants

05-10348R65

MOTION TO REMAND

To: United States District Court
District of Massachusetts

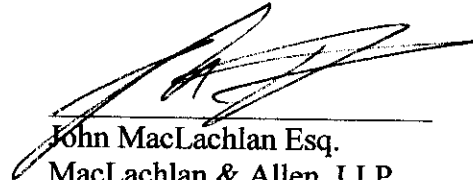
The plaintiff in the above action motions to remand the case for the following reasons:

1. On or about February 15, 2005, the defendants filed a Notice of Removal in the United States District Court for the District of Massachusetts.
2. On or about March 1, 2005, the plaintiff filed a motion to amend, as a matter of course, the Complaint in accordance with MRCP 15(a) and FRCP 15(a). The motion to amend stated, in part, "Remove Count III (Violation of Federal Civil Rights 42 U.S.C.A. §1983)."
3. The paragraph two (2) of the defendants Notice to Remand states in part "this Court has original jurisdiction under the provisions of 42 U.S.C. Section 1983, and is on which may be removed to this Court by the defendants pursuant to the provisions of 28 U.S.C. Section 1441."
4. The plaintiff's motion to amend removes the 42 U.S.C. Section 1983 Count. Thus, the federal court lacks subject matter jurisdiction. When there is no subject matter jurisdiction, remand is mandatory, 28 U.S.C. §1447(c).

WHEREFORE, the plaintiff respectfully pray that the action now pending in United States District Court for the District of Massachusetts be remanded to the Superior Court of the Commonwealth of Massachusetts in and for the County of Essex.

Dated: February 28, 2005

Respectfully Submitted,
The Plaintiff Jeffery Witham,
By his Attorney,



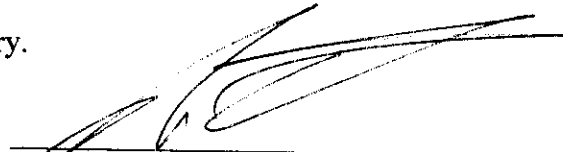
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion to Amend, Amended Complaint, and Motion to Remand was this day served upon all parties to this action by mailing same, first class postage prepaid, to Merrick, Louison & Costello, LLP, Attorneys for the Defendants.

SIGNED under the pains and penalties of perjury.

Dated: February 28, 2005


John MacLachlan, Esq.